IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Crl.MC.No. 2103 of 2007()

CC.890/1999 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY

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PETITIONER:

MANOJ SEBASTIAN, S/O. SEBASTIAN
THAIPARAMBIL HOUSE, KOORACHUNDU
ATHIYODI P.O. KOZHIKODE DIST.

BY ADV. SRI.SHAJI JOSEPH

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. GOKULAM CHITS AND FINANCE PVT. LTD. BALUSSERY BRANCH, KOZHIKODE DIST. REP. BY KUTTIKRISHNAN.

R1 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2103 of 2007

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Dated this the 28th day of June, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I.Act. Proceedings have been initiated as early as in 1999. Consequent to the non-appearance of the petitioner, the case has been transferred to the list of long pending cases in 2003. The petitioner has not appeared so far.

2. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate. According to him he is innocent. His absence was not wilful. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and apprise the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. Hand over copy of the order.

(R. BASANT)
Judge

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